

**Legislative Council Panel on Commerce and Industry  
Update on the No Fakes Pledge Scheme**

**Purpose**

At the meeting of the Legislative Council Panel on Commerce and Industry on 18 April 2006, Members suggested that the Intellectual Property Department (IPD) might wish to draw reference from the Quality Tourism Services (QTS) Scheme when considering measures to further improve the effectiveness of the No Fakes Pledge (NFP) Scheme. Having studied the QTS Scheme, IPD presents its observations in the ensuing paragraphs. This paper also gives an up-dated report on the operation of the NFP Scheme.

**Quality Tourism Services Scheme**

2. The QTS Scheme, established by the Hong Kong Tourism Board (HKTB), is a service certification programme. It aims at helping visitors and local consumers identify quality tourism service providers. By giving recognition to those applicant merchants who meet the prescribed standard of service quality; it helps enhance the capability of service providers to deliver value-added performance, in support of the further development of the tourism industry. Applicant merchants providing quality tourism services that meet a prescribed set of assessment criteria will be certified as QTS merchants under the Scheme. A QTS merchant is entitled to display the Quality Tourism Services decal, which serves to signify his QTS status as well as his pledge to provide quality services to customers.

3. Since the QTS Scheme is a service certification programme, HKTB has commissioned a professional consultant to conduct professional assessment of the services provided by applicant merchants. The professional consultant assesses service quality according to a prescribed set of criteria, and conducts site visits (informed and/or unannounced) to all QTS merchants during the year to ensure that their services measure up to the standards required. After the visit, the professional consultant will inform and request the QTS merchants to take appropriate remedial action if their services were found to fall short of the prescribed standards in any way.

4. A sub-committee, which reports to the QTS Committee under the HKTB, is responsible for the approval, suspension or termination of QTS status, and for keeping the assessment criteria and QTS scheme rules under review.

### **No Fakes Pledge Scheme**

5. The primary purpose of the NFP Scheme is to encourage retailers to demonstrate their pledge to sell genuine goods. By showcasing ethical practices, it helps nurture a mindset whereby retailers take pride in complying with intellectual property legislation. All retail merchants participating in the Scheme make, on their own accord, a pledge not to sell fake goods. The implementation of the NFP Scheme relies on the good faith of member merchants in abiding by the Code of Ethics under the Scheme.

6. Under the NFP Scheme, the issuing bodies<sup>1</sup> are responsible for the approval and termination of membership in accordance with the Code of Ethics jointly drawn up by the issuing bodies and other relevant organisations. IPD acts as a coordinator of the Scheme, providing administrative support to the issuing bodies and taking forward general promotion of the Scheme. IPD is not responsible for approving or terminating membership. Nor does it issue stickers and tent cards of the Scheme to member merchants.

### **Comparing the two schemes**

7. The QTS Scheme and the NFP Scheme are basically different in nature, in that the former is a certification scheme under which a third party ascertains whether a merchant has achieved the prescribed standard of

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<sup>1</sup> The issuing bodies participating in the Scheme are the Hong Kong and Kowloon Electrical Appliances Merchants Association Limited, the Hong Kong Record Merchants Association Limited, the Hong Kong General Chamber of Pharmacy Limited, the Hong Kong Retail Management Association, the Chamber of Hong Kong Computer Industry, the Hong Kong Jewellers' and Goldsmiths' Association, and the Hong Kong Coalition for Intellectual Property Rights of the Federation of Hong Kong Industries.

services, whereas the latter is a voluntary scheme which seeks to encourage retailers to take pride in respecting intellectual property rights (IPR).

8. The focus and coverage of the two schemes are not entirely the same. The target sectors of the QTS Scheme are retail shops, restaurants and visitor accommodation. It focuses on the product and service standards (for example, whether clear descriptions about the prices charged and product characteristics of the merchandise are available; whether receipts with sufficient details are provided; the ambience of the shop; the communication skills and working attitude of the shop attendants; and the efficacy of the procedures for handling customer complaints). The NFP Scheme, on the other hand, focuses on whether the goods are genuine or otherwise. As the NFP Scheme potentially covers all types of goods at the retail level, it will be very costly, if not impracticable, to appoint a third party for verifying whether the goods sold by member merchants are genuine. The examination of a product to see if it is counterfeiting or pirated requires in-depth knowledge of various features of the product. More often than not, only the IPR holder concerned may possess such knowledge. Besides, the process of examination could be very complicated. Hence, the IPR holders and the Customs and Excise Department (C&ED) are relied upon as the main bodies with the competence to conduct effective market surveillance against the sale of counterfeit and pirated goods. Through effective partnership with copyright and trademark owners and their relevant trade organisations, C&ED has been maintaining close market surveillance over suspected counterfeiting or piracy activities. It will take prompt action against any shop suspected of selling counterfeit or pirated goods. This enforcement mechanism has been working well. With vigorous enforcement, piracy and counterfeiting activities are under control. Only limited-scale illicit dealings at the retail level remain. In 2006, three million pirated discs worth about \$72 million were seized and 931 persons were arrested. Separately, 985 cases involving counterfeit goods and goods bearing false trade descriptions were acted upon with the arrest of 706 persons.

9. Under the QTS Scheme, participating merchants found to have breached the terms of the Scheme will have their QTS status terminated instantly and their names disclosed to the public by the HKTB. Where failure to comply with the assessment criteria is detected by the

professional consultant, participating merchants will be requested to adopt remedial measures recommended by the professional consultant to the satisfaction of the QTS Sub-Committee within a specified timeframe, or else their QTS status would be terminated and their names disclosed as well. Unlike the QTS Scheme, if member companies of the NFP Scheme are involved in selling counterfeit or pirated goods, they render themselves liable to civil and, in some circumstances, criminal actions<sup>2</sup>.

10. There is a mechanism under the NFP Scheme for handling situations where member merchants are suspected to have sold counterfeit or pirated goods. According to the Code of Ethics under the Scheme, if the issuing bodies or IPD have reasons to believe that a member merchant has failed to comply with the Code or if any action has been taken against it by C&ED, they may terminate the membership of the member merchant concerned. The issuing bodies and IPD are empowered to disclose the name of a company against which C&ED has taken action. In 2006, one retail merchant had his membership terminated owing to his failure to comply with the Code of Ethics. The termination was announced by IPD via the relevant webpage.

11. Although the two schemes are different in nature, their operations share some common features. The QTS Sub-committee will consider the records of complaints against the applicant merchants as provided by the Consumer Council and C&ED in assessing and approving new applications. An application will only be approved if no substantiated complaints are recorded in the preceding 12 months. Under the NFP Scheme, a retail merchant likewise needs to pass the complaint records test. A clean record (with no substantiated complaints from the above two bodies against the applicant in relation to the sale of counterfeit or pirated goods) within one year prior to its application for membership or annual renewal of membership is required.

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<sup>2</sup> Under the Trade Description Ordinance, the maximum penalty for sale of counterfeit goods is imprisonment of 5 years and a fine of \$500,000. Under the Copyright Ordinance, the maximum penalty for sale of pirated goods is imprisonment of 4 years and a fine of \$50,000 for each infringing copy.

## **Update on the NFP Scheme**

12. To widen the channels through which retail merchants may join the NFP Scheme, IPD invited the Hong Kong Jewellers' and Goldsmiths' Association, and the Hong Kong Coalition for Intellectual Property Rights of the Federation of Hong Kong Industries to become issuing bodies of the Scheme in May 2006. As at 6 February 2007, 380 retail merchants operating some 2 050 retail shops in total have joined the NFP Scheme. About 50 applications for membership including new applications and renewals are under processing. The IPD will update the information on the NFP Scheme webpage in a timely manner, through which consumers and visitors may gain access to the list of participating retailers under the Scheme.

13. To help consumers and visitors identify the retail merchants currently participating in the NFP Scheme, IPD has changed the colour of the "No Fakes" stickers and tent cards for 2007 and added the expiry date on them. In future, the colour of the stickers and tent cards will be changed every year for easy distinction. In all relevant promotional materials, IPD has reminded consumers and visitors to note the validity year printed on the "No Fakes" logo. Advertisements have been placed since September last year through different media such as newspapers, magazines, travel magazines, MTR, airport trolleys and lightboxes. IPD also worked with HKTB in August last year to start distributing "No Fakes Pledge" leaflets at its Visitor Information and Services Centres to promote the Scheme among inbound visitors.

14. In addition, improvements have been made to the rules concerning member merchants' use of the "No Fakes" logo. These include setting out clearly the procedures of putting applications to IPD for use of the "No Fakes" logo in member merchants' promotional materials, and the promulgation of guidelines on the use of the logo (one such requirements being that the logo must be used in its entirety, with the validity year printed on it).

15. To further improve the operation of the NFP Scheme, the issuing bodies have agreed to submit a report to IPD every six months starting from 2007 regarding the operation of the Scheme. The report will

include an account of any complaints received and operational difficulties encountered, with a view to identifying room for improvement.

### **Concluding Remarks**

16. The QTS and NFP schemes share some common features. We will continue to maintain liaison with HKTB and keep the NFP Scheme under review. We will also give consideration to any operational practices of the QTS Scheme found in the future to be of good reference value to the NFP Scheme.

Intellectual Property Department  
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